

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD L. MOSHIER, JR)	
)	
Plaintiff,)	CIVIL ACTION NO. 05-180(ERIE)
)	
v.)	JUDGE MCLAUGHLIN
)	MAGISTRATE JUDGE BAXTER
UNITED STATES OF AMERICA,)	
)	Electronically Filed
Defendant.)	

UNITED STATES' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, defendant the United States of America, by its undersigned counsel, respectfully requests that the Court issue an Order entering summary judgment in its favor in this case, and in support thereof states as follows:

1. *Pro se* prisoner Donald L. Moshier, Jr. originally filed this *pro se* lawsuit against the United States of America and five (5) individual defendants, alleging tort and constitutional claims based on allegedly inadequate medical care that he received during his incarceration at a federal prison in McKean County, Pennsylvania ("FCI McKean").

2. Plaintiff's only remaining claim, however, is against the United States for medical malpractice pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.* In particular, plaintiff's remaining claim alleges that the medical staff at FCI McKean provided negligent medical treatment with regard to his Hepatitis C virus.

3. As a result of the alleged medical malpractice, the Amended Complaint requests \$100,000.00 in actual damages, plus costs and any other relief the Court deems appropriate. (*See* Am. Compl., ¶ 40(B)-(D)).

4. For the reasons stated in the United States' Brief, the Court should enter summary judgment in favor of defendant as to all of plaintiff's claims.

5. The United States' Brief in support of this Motion, together with separate Appendix of Exhibits in Support of the United States' Motion for Summary Judgment, and United States' Concise Statement of Material Facts in Support of its Motion for Summary Judgment, are being filed simultaneously herewith, and are incorporated in this Motion by reference.

WHEREFORE, defendant the United States of America respectfully requests that the Court issue an Order granting summary judgment in its favor and against Plaintiff Donald L. Moshier with regard to the claims set forth in Plaintiff's Amended Complaint.

A proposed order is attached.

Respectfully submitted,

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Dated: October 12, 2007